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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/701,948	03/16/2001	Jo McKnight	9493.17285	1687
26308 7590 06/23/2008 RYAN KROMHOLZ & MANION, S.C. POST OFFICE BOX 26618 MILWAUKEE, WI 53226				
EXAMINER				
WATKINS III, WILLIAM P				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
06/23/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/701,948

Applicant(s)

MCKNIGHT ET AL.

Examiner

William P. Watkins III

Art Unit

1794

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4, 21, 22, 24-33 and 35-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1, 2, 4, 21, 22, 24-33, 35-37 and 39 is/are allowed.
- 6) ☒ Claim(s) 38 and 40-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/3508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

1. Claims 1-2, 4, 21-22, 24-33, 35-37 and 39 remain allowed for the reasons given in section 1 of the detailed portion of the office action mailed 09 April 2003.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 38, 40-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Watkins (U.S. 5,305,483) in view of Hurley (U.S. 2,826,244) further in view of Frankenberg (U.S. 4,326,310) further in view of Hargest et al. (U.S. 5,787,534).

Watkins teaches a porous foam layer that conveys air from an adjacent air pocket up through holes in a cover sheet on the foam layer (col. 3, lines 20-40). Frankenberg teaches use of an adhesive to attach a porous cover layer to a foam layer of a pad in order to provide a secure attachment to the foam layer (col. 2, lines 35-45 and col. 2, lines 50-60). Hurley teaches using channels in a foam pad layer to enhance the transverse flow of air in the pad (element 24, col. 3, lines 45-60). Hargest et al. teaches the use of an open textile that may be made of wire or other materials in place of a porous foam (col. 13, lines, lines 35-50). The instant invention claims a permeable

material next to an impermeable sheet with perforations with means to flow air through a transverse direction through the permeable layer and into the perforations of the top perforated layers. The instant invention further claims use an open textile as the air permeable layer.

It would have been obvious to one of ordinary skill in the art to have placed channels in the foam layer of Watkins in order to avoid the use of an external air pocket and enhance transverse flow because of the teachings of Hurley. It further would have been obvious to secure by lamination the cover layer of Watkins in view of Hurley in to provide secure attachment of the cover layer because of the teachings of Frankenberg. It still further would have been obvious to substitute a porous textile for the foam layer of Watkins as modified above as Hargest et al. teaches open textiles as a substitute for porous foams. Variation in thickness of the laminate and selection of a particular type of open fabric is taken as being within the ordinary skill of the art depending on the amount of ventilation required in the final application.

4. Applicant's arguments with respect to claims 38 and 40-43 have been considered but have not been found persuasive.

As a first matter, a significant portion of applicant's arguments attack the references in a piecemeal fashion, by arguing that specific references do not contain all of the limitations of the independent claims, when the examiner only relies upon them for specific teachings. The combination of references must be considered as a whole, when arguing the lack of specific limitations.

Regarding the Watkins reference, applicant argues that the pillow portion of the pad is not truly "flexible" in the sense used in the claims. The examiner constructs "flexible" as being able to flex. The cover of the pillow is made of a pliable outer layer and the central foam depresses when in contact with the babies head. Both of these materials can be said to "flex" and are therefore taken as being flexible. Filling the air pocket with air does not change this ability to flex as balloons and other air filled objects still flex under specific applied pressure. The construction of Watkins is capable of being put on top of a mattress.

Applicant argues that the substitution of transverse foam cavities in place of an adjacent air pocket is not a simple substitution of one element for another with predictable results. The examiner disagrees. Both an adjacent air pocket and transverse cavities in the foam layer allow the air to be distributed along the entire width of the pillow. They are both transverse cavities that work in a similar manner with predictable results of getting the air distributed across the entire width of the pillow.

Applicant argues that Hargest et al. teaches a wire spring for a mattress and not a textile. The examiner disagrees. In col. 13, lines 37-49 Hargest et al. describes an open weave material and a wire "fabric". The first definition of textile given in "Fairchild's Dictionary of Textiles" 7th edition, page 572, is "A broad-classification of materials that can be utilized in constructing fabrics". A wire fabric, with an open weave can thus be considered to be a textile material in the broad sense of the word. Applicant states that it cannot be worn as a coat and refers to a more detailed description of examples of textiles given in the specification at page 3 lines 4-9, page 6,

lines 1-4 and page 9, lines 21-26 . Features of examples given in the specification cannot be imported as limitations in the instant claims by inference. There is no specific definition of textile given in the specification. It is thus proper for the examiner to use the broadest reasonable construction that would be apparent to one of ordinary skill in the art.

Applicant argues that Frankenberg is not relevant to the instant claims. The instant claims call for lamination of the first and second layers with still providing air flow between the layers. Frankenberg teaches a specific technique to laminate first and second layers and still allow air flow through a permeable layer. This teaching is relevant to the instant limitation calling for lamination of the layers.

Regarding Hurley, applicant argues that there is no teaching of transverse air flow. The examiner disagrees. Figure 6 clearly shows air flow that transverses the length of the pillow and exits through pores in the foam layer to the surface of the foam layer.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Watkins III whose telephone number is 571-272-1503. The examiner works an increased flex time schedule, but can normally be reached Monday through Friday, 11:30 A.M. through 8:00 P.M. Eastern Time. The examiner returns all calls within one business day unless an extended absence is noted on his voice mail greeting.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

WW/ww

June 23, 2008

/William P. Watkins III/
Primary Examiner, Art Unit 1794